

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDDIE TARAFA, : USDC SDNY  
DOCUMENT  
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DATE FILED: 8/12/11

Petitioner, : 10 Civ. 3870 (JGK) (HBP)

-against- : OPINION  
AND ORDER

DALE ARTUS, : X

Respondent. : X

PITMAN, United States Magistrate Judge:

By notice of motion dated December 3, 2010 (Docket Item 20), respondent moves for a protective order exempting from disclosure the files of the Bronx County District Attorney's Office pertaining to Bronx County Indictment Number 3439/2004. Petitioner has not submitted any response to the motion. For the reasons set forth below, the motion is granted.

Petitioner in this habeas corpus proceeding challenges a judgment of conviction entered on Bronx County Indictment 3821/2001. On or about July 21, 2010, petition moved for the unsealing of Indictment 3821/2001, the unsealing of the minutes of state court proceedings conducted on December 12, 2003 and December 10, 2004 and copies of those minutes. Respondent consented to petitioner's motion and sought the unsealing of additional documents, namely the transcripts of court proceedings

relating to Bronx County Indictment 3439/2004 and the file of the Bronx County District Attorney concerning that indictment.<sup>1</sup> Respondent sought the unsealing of these additional documents in order to facilitate his response to the petition. Respondent's unsealing motion with respect to Indictment 3439/2004 was unopposed.

The Honorable John G. Koeltl, United States District Judge, granted both petitioner's and respondent's requests for unsealing in an Order dated August 24, 2010. With respect to Indictment 3439/2004, the Order provided:

The respondent has sought, and this Court granted, the application to unseal the remaining files for indictment No. 3439/2004 in the possession of the Bronx County District Attorney for the purposes of this case. Because the respondent seeks to use those documents for purposes of this case, those documents should also be provided to the petitioner unless the respondent shows good cause why they should not also be produced.

(Order dated August 24, 2010 at 2).

According to the uncontradicted affidavit submitted by respondent's counsel in support of the pending motion, the only documents concerning Indictment 3439/2004 that respondent used in connection with his opposition to the petition were the transcripts of two state court proceedings conducted on December 10,

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<sup>1</sup>Although petitioner was charged in Indictment 3439/2004, he never convicted of any of the charges set forth in the indictment. Indictment 3439/2004 was ultimately dismissed.

2004 and February 16, 2006. Counsel states that copies of these transcripts were produced to petitioner twice.

Petitioner now seeks a protective order exempting from disclosure all portions of the Bronx District Attorney's file concerning Indictment 3439/2004 that were neither requested by petitioner nor used by respondent, namely all documents other than the transcripts of two court proceedings conducted on December 10, 2004 and February 16, 2006.<sup>2</sup>

Respondent's motion is granted. The only materials concerning Indictment 3439/2004 that respondent used in opposition to the petition were the December 10, 2004 and February 16, 2006 transcripts, and those items have been produced to petitioner. Petitioner has never requested any of the remaining material concerning Indictment 3439/2004, the material appears to be irrelevant to the petition and petitioner does not even oppose the application for a protective order exempting the material from disclosure. Given that petitioner has never indicated any interest in those portions of the Bronx County District Attorney's file concerning Indictment 3439/2004 that respondent did

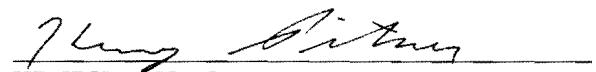
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<sup>2</sup>It is not entirely clear whether the August 24, 2010 Order was intended to reach those portions of the Bronx County District Attorneys File concerning Indictment 3439/2004 that respondent did not use. The present motion appears to be based on the assumption that it does reach those unused portions of the file.

use, there is good cause for the issuance of a protective order and respondent's motion for a protective order (Docket Item 20) is, therefore, granted.

Dated: New York, New York  
August 12, 2011

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

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